

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1407 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

- =====
1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

PIYUSH @ GIGNESH MADHAVLAL SONI

Versus

COMMISSIONER OF POLICE

Appearance:

MS DR KACHHAVAH for Petitioner

MR KT DAVE, AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 24/04/2000

ORAL JUDGEMENT

#. Commissioner of Police, Ahmedabad City, Ahmedabad, passed an order dated November 29, 1999, in exercise of powers under section 3 (1) of the Gujarat Prevention of Anti-Social Activities Act, 1985 ("PASA Act" for short), detaining Piyush @ Jignesh Madhavlal Soni under the

provisions of the PASA Act.

#. The grounds of detention indicate that the detaining authority took into consideration one offence registered against the petitioner under the Bombay Prohibition Act. The detaining authority also took into consideration the statements of two anonymous witnesses in respect of two incidents that occurred on November 7, 1999 and November 13, 1999 and came to conclusion that the petitioner is a "bootlegger", that his activities are detrimental to public order, that fear expressed by the witnesses qua the petitioner was genuine and therefore, powers under section 9(2) of the PASA Act were exercised by the detaining authority by not disclosing identity of these witnesses.

#. Ms. Kachchhwah, learned advocate appearing for the petitioner submitted that there is improper exercise of powers under section 9(2) of the PASA Act. The statements of witnesses have been recorded on November 27, 1999 and November 28, 1999. They are verified on November 29, 1999 and the order is passed on that very day. She further submitted that the detenue was under judicial custody when the order of detention came to be passed. There is one prohibition case against him and the petitioner was given on police remand till 29th November, 1999, the day on which the order is passed. As such, there were no compelling reasons for the detaining authority to detain the petitioner while he was in judicial custody and therefore, the order is bad in law. She pressed into service the decision in the case of Sanjeev Kumar Aggarwal v. Union of India, AIR 1990 SC 1202.

#. Mr. K. T. Dave, learned AGP has opposed this petition.

#. Considering rival side contentions, it is found to be correct that the statements of anonymous witnesses have been recorded on 27th and 28th November, 1999 and they are verified on 29th November, 1999 and on that very day, the order is passed.

#. So far as the statements of anonymous witnesses are concerned, it may be noted that the detaining authority has observed that the fear expressed by the witnesses in the statements are correct and genuine. Barring these statements, there appears nothing to indicate an exercise having been undertaken by the detaining authority for verifying correctness and genuineness of the statements and the fear expressed by the witnesses. The detaining

authority has to take into consideration the background, the antecedents, the character, etc. of the detainee while considering the need for exercise of powers under Section 9(2) of the PASA Act. The authority has to scale the right of the detainee of making an effective representation on the one hand and the public interest on the other and has to strike a balance between the two. The detaining authority has not filed any affidavit nor is there any contemporaneous material to indicate undertaking of such exercise by the detaining authority and, therefore, the exercise of powers under section 9(2) of the PASA Act can be taken to have vitiated. No reliance, therefore, can be placed on these statements for sustaining the order of detention. There is improper exercise of powers under section 9(2) of the PASA Act, as there is no material to indicate the exercise as stated above (BAI AMINA v. State of Gujarat & others, 1981 GLR 1186 and Kalidas Chandubhai Kahar v. State of Gujarat & ors., 1993 (2) GLR 1659).

#. Coming to the registered offence, it may be noted that admittedly the detainee was under judicial custody. As such, there is no material to indicate that there was an application by the detainee for bail and in the absence of such material, the detaining authority could not have passed the order in the absence of compelling circumstances. In this regard, decision in the case of Sanjeev Kumar Aggarwal v. Union of India, AIR 1990 SC 1202 can be considered.

#. Adverting to the offences registered against the detainee, a perusal of the First Information Report and the other relevant documents supplied to the detainee makes it abundantly clear that there was no disturbance to public order. All that was involved was a law and order situation. Resultantly, the satisfaction arrived at by the detaining authority about the activities of the detainee being detrimental to public order is without any basis. Neither the statements nor the registered offences can be accepted to form the basis of this satisfaction.

#. In view of the above discussion, the reliance placed on by the detaining authority on the statements of anonymous witnesses and the registered offences cannot be upheld. The order of detention as well as the continued detention both are rendered bad in law. The petition, therefore, deserves to be allowed.

##. For the reasons stated above, the petition is allowed. Impugned order dated November 29, 1999 is

hereby quashed and set aside. Detenue - Piyush @ Jignesh
Madhavlal Soni is hereby ordered to be set at liberty
forthwith, if not required in any other matter. Rule is
made absolute with no order as to costs.

[A.L. DAVE, J.]

pirzada/-